In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.25337-M of 2007

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Date of decision: 21.5.2007

Jasbir Singh alias Dimpa

.....Petitioner

v.

State of Punjab and another

.....Respondents

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Present: Mr. R.S. Cheema, Senior Advocate with Mr. K.S. Nalwa, Advocate for the petitioner.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab for the respondent-State.

Mr. Vikram Chaudhri, Advocate for the complainant.

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S.S. Saron, J.

By way of the present petition under Section 438 of the Code of Criminal Procedure (`Cr.P.C.' - for short), the petitioner prays for a direction to the Arresting Officer to release him on bail forthwith in the event of his arrest in case FIR No.21 dated 29.1.2007 registered at Police Station Beas, Police District Majitha, District Amritsar for the offences under Sections 302, 427, 148 and 149 Indian Penal Code (`IPC' – for short) and Sections 25 and 27 of the Arms Act, 1959.

The FIR dated 29.1.2007 (Annexure-P.1) has been registered on the statement of Jagir Singh, member, Shiromani Gurdwara Parbandhak Committee (`SGPC' – for short). It is stated by the complainant that his nephew Manjinder Singh Kang is a candidate of the Shiromani Akali Dal

(Badal) (`SAD-B' – for short) for the Assembly elections from the Beas constituency. In connection with the elections the persons from the complainant side were going to Rayya from Beas. Balkar Singh, Jarnail Singh and Harjinder Singh were going in a Bolero vehicle. Dilbagh Singh was going on a motorcycle. Many other persons, out of which some were on motorcycles and other vehicles, were accompanying them. At about 1.00 p.m. while going towards Rayya from Beas they reached in front of the office of the petitioner who was the Congress party candidate for the elections. The petitioner armed with a pistol, Harmanbir Singh alias Tinka SP (non-petitioner) armed with a revolver, Harbhinderdeep Singh Rajan (non-petitioner) armed with a pistol, who are all sons of Sant Singh and Balkar Singh (non-petitioner) armed with double barrel gun, Varinder Singh alias Vicky (non-petitioner) armed with double barrel gun, Jaswant Singh (non-petitioner) armed with pistol, Kashmir Singh (non-petitioner) armed with double barrel gun, Shamsher Singh (non-petitioner) armed with pistol came out from the office of the petitioner hurling abuses. The petitioner and his companions started firing at the complainant side. The petitioner fired a shot with his pistol which hit Dilbagh Singh who was going on a motorcycle. He died at the spot as the shot hit him on his back. This caused panic amongst the persons. The complainant suspected that other persons from their side also must have received fire arm injuries. The shot also hit a tractor owned by the complainant. The complainant side ran away leaving their vehicles which were also damaged. Thereafter, the Police reached the spot and the complainant Jagir Singh gave his statement to Malkit Singh SI/SHO, Police Station, Beas. In terms of the statement made by the complainant Jagir Singh the FIR has been registered. The petitioner

is the main accused who fired with his pistol hitting Dilbagh Singh on his back. The other accused were also carrying fire arms and they had fired.

Shri R.S. Cheema, Senior Advocate with Shri K.S. Nalwa, Advocate appearing for the petitioner has contended that the petitioner has been named as the main accused in the occurrence as he was the candidate of the Congress party for the Punjab Legislative Assembly elections that were to be held on 13.2.2007. It is submitted that one Smt. Balbir Kaur, Sarpanch of Baba Bakala, who is a supporter of the Congress party had been kidnapped on 28.1.2007. In this respect FIR for the offences under Sections 364 and 34 IPC was registered at Police Station Beas. In the said complaint serious allegations were made against Manjinder Singh Kang, candidate of the SAD-B from Beas Assembly Constituency. One Sarabjit Singh Sandhu, who was suspected of kidnapping Smt. Balbir Kaur was arrested by the Beas Police and his arrest was opposed by the SAD-B members. On 29.1.2007, on a call given by the SAD-B candidate the Police Station was `gheraoed' for the release of aforesaid Sarabjit Singh Sandhu. The Beas Police released the suspect. The Akali workers in jubilation of his release took out a procession and when they reached near the Congress party election office, the Akali workers, who were already in a belligerent mood and were armed, raised slogans against the Congress party. The mob comprising of Akali workers, it is contended, turned into an unlawful assembly and at this stage Dilbagh Singh (deceased) sustained injury on his back which resulted in his death. The photographs of the Akali supporters taking out the procession have been placed on record as Annexure-P.3. The complainant Jagir Singh on 3.2.2007 got his supplementary statement (Annexure-P.4) recorded in which he stated that

his earlier statement was recorded while he was nervous because one of their workers had been killed. It is stated that during the occurrence the petitioner was present at the spot. However, at that time various other persons as mentioned in the statement including one Jaimal Singh, who was armed with a pistol, was also present. The said Jaimal Singh fired with his pistol on the person of Dilbagh Singh (deceased) and due to the bullet injury the latter died at the spot. The complainant Jagir Singh knew him well because he serves in the Badala Cooperative Branch. It is submitted that the attribution of bullet injury on the person of Dilbagh Singh (deceased) has been changed from the petitioner to Jaimal Singh because the pistol which was being carried by the petitioner did not tally with the bullet recovered from the dead body of the deceased as per the FSL report (Annexure-P.14) received from the Director, FSL. The petitioner in fact, it is stated, had joined the investigation and appeared before the Special Investigation Team (`SIT' – for short) that had been constituted and compact disc (CD) which is with the prosecution would show that the petitioner was carrying a mobile phone at the time of occurrence. Reference has also been made to the statement (Annexure-P.11) of Gurpreet Singh, who was Personal Security Officer (PSO) with the petitioner. He inter alia stated that during the occurrence the petitioner was stopping the persons who had started firing with their weapons. To similar effect is the statement (Annexure-P.12) of HC Baldev Singh. Therefore, it is submitted that the petitioner in the event of his arrest is liable to be admitted to bail.

In response, Shri I.P.S. Sidhu, learned Senior Deputy Advocate General, Punjab appearing for the State and Shri Vikram Chaudhri, Advocate, learned counsel appearing for the complainant have submitted

that the petitioner is the main accused to whom the pistol shot injury is attributed. It is submitted that the investigation was initially carried out in a perfunctory manner and supplementary statement (Annexure-P.4) of Jagir Singh complainant has been created by the Police to favour the petitioner as the same does not require the signatures of the complainant. Shri Vikram Chaudhri, Advocate appearing for the complainant has submitted that no such statement was made by Jagir Singh complainant and the Police on their own have recorded it. It is submitted that the said supplementary statement (Annexure-P.4) was recorded so as to help the petitioner. The statement (Annexure-P.11) of Gurpreet Singh, PSO of the petitioner and the statement (Annexure-P.12) of HC Baldev Singh, it is submitted, were recorded by the Police only to help the petitioner. Even the SIT that had been constituted on 31.1.2007 conducted the investigation but did not arrest the petitioner so as to favour him. Therefore, it is submitted that the custody of the petitioner is required so as to unearth the actual position and the sequence of events to effectively carry out the investigations, which are inconclusive.

In response, learned senior counsel appearing for the petitioner has further contended that all the documents and the statements on which reliance has been placed on behalf of the petitioner are in fact part of the charge report (challan) filed by the Police and, therefore, it is not as if the petitioner has on his own obtained the statement.

I have given my thoughtful consideration to the matter. It may be noticed that the Assembly elections in Punjab were held on 13.2.2007. Due to the occurrence in the Beas Assembly constituency the elections that were to be held on 13.2.2007 were postponed and were ultimately held on

11.3.2007. The petitioner was a candidate of the Congress party for the Beas Assembly constituency and Manjinder Singh Kang was the candidate of the SAD-B. FIR dated 29.1.2007 (Annexure-P.1) in the case has been registered on the statement of Jagir Singh who is a member of the SGPC. In his statement he has specifically stated that on 29.1.2007 in connection with the elections when the complainant side was going to Rayya from Beas at about 1.00 p.m. they reached in front of the office of the petitioner. He was armed with a pistol and others were also armed. The petitioner and his companions started firing at the complainant side. The petitioner fired a shot with his pistol which hit Dilbagh Singh, who was going on his motorcycle and he died at the spot on account of the fire arm injury which was caused on his back. In the circumstances of the case a SIT was constituted with Manminder Singh, SP (Headquarters), Amritsar as the In-charge. After 31.1.2007, the SIT conducted investigations in the case. The statements of various persons were recorded on the basis of which all the accused in the case were named as such. On 3.2.2007, the CD that was recovered was played and on watching the same various other persons were named as accused in the case. On 4.2.2007, one Mauser of .30 bore of Jaimal Singh son of Mukhtiar Singh was taken in possession by Suraj Kumar Inspector, CIA. The contention of the learned senior counsel for the petitioner is that during the course of investigation by the SIT, the petitioner had joined the investigation and fully cooperated with it. He was found innocent during the investigation that was conducted. It is submitted that the bullet recovered from the body of the deceased along with the weapons recovered from the accused including Jaimal Singh were sent to the FSL for their examination and report. It is stated that the Police had come to know

that the bullet recovered from the body of the deceased had tallied with the pistol which was carried by Jaimal Singh. The supplementary statement (Annexure-P.4) of Jagir Singh under Section 161 Cr.P.C. was recorded wherein he inter alia stated that various persons duly armed were present. Besides, Jaimal Singh, who was armed with pistol fired at Dilbagh Singh and due to the bullet injury, the latter died at the spot. It is submitted that in fact Jaimal Singh who had been named as an accused in the supplementary statement (Annexure-P.4) is neither a Congress worker nor is he residing within the Beas constituency. Therefore, it is submitted that Jaimal Singh is the person with whose fire arm injury Dilbagh Singh died and this stands corroborated by the FSL report (Annexure-P.14) as the petitioner has come to know that the bullet recovered from the body of the deceased tallies with the pistol attributed to Jaimal Singh. It has been submitted that the petitioner is being implicated due to the change of regime after the elections and the petitioner is being subjected to political vendetta.

The facts and circumstances of the case show that in the initial version that has been recorded on the statement of Jagir Singh complainant is that the petitioner fired with the pistol which he was carrying and the bullet hit Dilbagh Singh on his back and he died. The question whether Jagir Singh gave a supplementary statement (Annexure-P.4) on 3.2.2007 is not to be gone into at this stage for that is a matter to be considered in trial. Learned counsel for the complainant Jagir Singh has denied giving any supplementary statement. The learned counsel appearing for the State and the complainant have though contended that the SIT had tried to favour the petitioner by not arresting him, however, that is not of much significance. The Supreme Court in the case of M.C. Abraham v. State of Maharashtra,

2003 (1) RCR (Cr.) 452 has observed that it is open to the Police Officer, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received or reasonable suspicion exists of having been so concerned. Obviously, the Police Officer, it was observed, is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the Investigating Officer may make up his mind as to whether it is necessary to arrest the accused person. Therefore, the mere fact that the petitioner was not arrested by the SIT at that stage when he appeared before it is inconsequential. The custody of the petitioner is sought for the purpose of carrying out the investigation, which it is stated are inconclusive. The mere change of the political regime in the State of Punjab cannot be said to be a ground for the false implication of the petitioner. In the initial statement of Jagir Singh complainant on the basis of which the FIR has been registered, the petitioner is the person who it is stated fired with his pistol and the bullet hit Dilbagh Singh – deceased on his back. The fact regarding the recovery of pistol from Jaimal Singh and to connect the injury on the person of the deceased with the weapon recovered from Jaimal Singh at this stage would be going into the merit of the case which is the domain of the trial Court after evidence has been led. The FSL report (Annexure-P.14) records that the .30" Jacketed bullet had been fired from .30" Waffenfabrik Mauser pistol No.19200. This was contained in parcel-`M' recovered from the body of Dilbagh Singh. Two .30" (7.62 x 25 mm) S&B cartridge cases had also been fired from the said .30" Waffenfabrik Mauser pistol No.19200. However, these facts and the

recovered cartridges being fired from the pistol, which Jaimal Singh is stated to be carrying or that which the petitioner is alleged to have been carrying would again require the appreciation of evidence after it has been led. The compact disc (CD) a perusal of which learned senior counsel states would show that the petitioner was carrying a mobile phone as also the effect of the statement (Annexure-P.11) of Gurpreet Singh, PSO to the petitioner and statement (Annexure.P.12) of HC Baldev Singh wherein it is stated that the petitioner has been stopping the persons from firing are also matters for consideration of the trial. These may be grounds for consideration of regular trial but for the grant of pre-arrest bail considerations are different. In Pokar Ram v. State of Rajasthan, (1985) 2 SCC 597, the Supreme Court in respect of grant of pre-arrest bail to a person accused of committing murder with fire arm observed that anticipatory bail to some extent intrudes in the sphere of investigation of crime and the Court must be cautious and circumvent in exercising this power of discretionary nature. Some very compelling circumstances must be made out for granting bail to the person accused of murder by fire arms when the investigation is in progress. Relevant considerations governing Court's decision in granting anticipatory bail under Section 438 Cr.P.C. are materially different from those when an application for bail by a person, who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and the bail is sought during the pendency of the appeal. Some of the relevant considerations for granting anticipatory bail, it was observed, are the nature and seriousness of the proposed charges, the context of events likely to lead to the making of the charges, a reasonable possibility of the applicant's

presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interest of the public or the State". Status in life, affluence or otherwise, it was observed, are hardly relevant considerations while examining the request for granting anticipatory bail.

The present case is not one which would warrant the exercise of jurisdiction by this Court to extend the concession of pre-arrest bail when death has been caused with the fire arm injury and the same is attributed to the petitioner in the initial report.

In the circumstances, there is no merit in this petition and the same is accordingly dismissed. However, any observations made herein shall not be construed as an expression on the merit of the case and the learned trial Court shall consider the case on the basis of evidence and material as adduced before it.

May 21, 2007. **(S.S. Saron)**
Judge

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